IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 107 OF 2006

SHRI LIGORIO PEREIRA AND ANR., ...Petitioners

Versus

M/S RAMESH HOTELS AND RESORTS PVT.LTD. THROUGH ITS POWER OF ATTORNEY MR.S.V.BALARAM AND 2 ORS., ...Respondents

Mr. D. Pangam for the petitioners.

Mr. M.S. Usgaonkar, senior advocate with Mr. Sudin M. S. Usgaonkar, for respondent 1.

Mr. S. Vahidullah, G.A. for respondents 2 and 3.

Coram:- SMT. RANJANA DESAI, J.

Date:- 28th June, 2006

P.C. :-

1. The petitioners are the original defendants. Respondent 1 filed a suit under section 4 of the Mamlatdars Court Act, 1966 (for short, "the said Act") praying for an injunction restraining the petitioners from interfering with the suit access. On 28/7/2005, the Mamlatdar passed an order of temporary injunction restraining the defendants from interfering with the suit access until the matter is heard and finally disposed of on merits. A revision was carried by the petitioners in the court of Additional Collector-I, South Goa at Margao. The said revision came to be dismissed and, hence, this writ petition.

2. I have heard the learned counsel appearing for the petitioners. He made two legal submissions. He contended that the basis of respondent

1's claim is an agreement of the year 2001 under which according to respondent 1 the suit access has been sold by the petitioners to him. The learned counsel contended that the Mamlatdar has usurped the powers of a civil court and almost granted a decree of specific performance, which he could not have done. The learned counsel then urged that the Mamlatdar has no power to grant temporary injunction. Therefore, the order passed by him is without jurisdiction. In this connection he referred to section 94 of the Civil Procedure Code and contended that even under the Code of Civil Procedure, in order to prevent the ends of justice from being defeated the court may, if it is so prescribed, grant a temporary injunction and it is Order XXXIX which makes the provision for such injunction. In the instant case, urged the learned counsel, there is no such provision in the said Act and the rules made thereunder for grant of temporary injunction and, therefore, the Mamlatdar could not have passed an order of temporary injunction.

3. I am not impressed by both the legal submissions made by the learned counsel. The order passed by the Mamlatdar cannot be construed to mean that he has usurped the powers of a civil court. It cannot be said that he has passed a decree of specific performance. The agreement in question is considered by him as a piece of evidence to come to the ultimate conclusion. This submission of the learned counsel must, therefore, fail.

4. So far as the second legal submission made by the learned counsel is concerned, my attention is drawn by Mr. Usgaonkar, the learned senior counsel for respondent 1, to sub-section 2 of section 4 of the said Act which indicates that the Mamlatdar does have the power of issuing order of injunction. As regards the contention that temporary injunction order cannot be passed by the Mamlatdar, I may usefully refer to the judgment of the Supreme Court in Union of India & Anr. v. Paras Laminates (P) Ltd., (1990) 4 SCC 453, where the Supreme Court was dealing with the powers of the Customs, Excise and Gold (Control) Appellate Tribunal (hereinafter called "the Tribunal"). It was argued that while the powers of

a civil court are plenary and unlimited unless expressly curtailed by statute, the powers of a Tribunal are the result of express grant and cannot exceed the bounds limited by the constituting statute. While dealing with this submission, the Supreme Court observed as under :

"There is no doubt that the Tribunal functions as a court within the limits of its jurisdiction. It has all the powers conferred expressly by the statute. Furthermore, being a judicial body, it has all those incidental and ancillary powers which are necessary to make fully effective the express grant of statutory powers. Certain powers are recognised as incidental and ancillary, not because they are inherent in the Tribunal, nor because its jurisdiction is plenary, but because it is the legislative intent that the power which is expressly granted in the assigned field of jurisdiction is efficaciously and meaningfully exercised. The powers of the Tribunal are no doubt limited. Its area of jurisdiction is clearly defined, but within the bounds of its jurisdiction, it has all the powers expressly and impliedly granted. The implied grant is, of course, limited by the express grant and, therefore, it can only be such powers as are truly incidental and ancillary for doing all such acts or employing all such means as are reasonably necessary to make the grant effective."

5. In the facts of this case, applying the principle enunciated by the Supreme Court, it can be said that the Mamlatdar has the incidental and ancillary power to pass the impugned order to make effective the ultimate relief.

6. I am, therefore, unable to come to the conclusion that any illegality is committed by the Mamlatdar. There is no merit in the petition. Petition is rejected. Needless to say that the ex-parte stay stands vacated.

SMT. RANJANA DESAI, J.

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